(4)

Supreme Court, U.S.
FILED
FEB 26 2002
CLERK

No. 01-1033

In The

Supreme Court of the United States

ANITA D. BORLAWSKY,

Petitioner,

v.

TOWN OF WINDHAM, R. MICHAEL DENBOW, SCOTT LOSCIUTO and JANETTE LOSCIUTO,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

REPLY BRIEF

GROVER ALEXANDER
Counsel of Record
348 Red Feather Lane
Brentwood, TN 37027
(207) 657-4567

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

5PP

REPLY BRIEF

Petitioner respectfully submits this Reply Brief pursuant to Supreme Court Rule 15(6). Although recognizing that discussion of disputed facts is not favored in a Certiorari proceeding, Petitioner feels compelled under Supreme Court Rule 15(2) to briefly challenge the factual allegations of the Respondents.

The Brief In Opposition of each Respondent is addressed separately.

I. MICHAEL R. DENBOW

On page 2, DENBOW recites facts JANETTE allegedly reported to him; however, JANETTE denies having given DENBOW the information he recites as the basis for the probable cause determination. If one is to believe JANETTE, then DENBOW clearly had no basis for probable cause to arrest ANITA.

Equally important is that DENBOW was duty-bound to consider the statutory exclusion of parental discipline from the crime of assault as set forth in *17-A.M.R.S.A. Section 106 and 19-A.M.R.S.A. 4002(1)(A)*; thus any reasonably cautious officer would have sought clarification and obtained other evidence through interviewing the alleged perpetrator, the alleged victim and an eleven year old eye-witness, all of whom were together and readily available to him for interview.

In truth, DENBOW never had probable cause at any point; and had he interviewed ANITA, JANELLE and JOSEPH, he would have realized that the incident was simply a disciplinary family matter involving a parent

and a rebellious child – an event that happens every day all over America.

II. JANETTE LOSCIUTO

At note 2 on page 2, JANETTE has grossly misrepresented the facts relating to the sufficiency of the complaint. There has never been a conference of any kind between the District Court Judge and counsel, although the phrasing used by JANETTE implies that there was a conference of some sort with the District Judge wherein he expressed "frustration" with the complaint. This flatly is not true! The nearest we ever came to the scenario described by JANETTE's counsel was during a telephone pre-trial conference wherein the Magistrate explained that he did not have the complaint in front of him at his home where he was recuperating from very recent spinal surgery and could not clearly follow the causes of action being enumerated by Plaintiff's counsel. Counsel for both JANETTE and SCOTT then began to gripe about the clarity of the complaint because they had negligently failed earlier to answer all the causes of action asserted against them. No 12(b)(6) motions have ever been filed.

On page 5, JANETTE refers to the testimony of two witnesses present at the clogging event and the return trip to Maine. What she doesn't disclose is that the 17 year old female (Kirsten Gustofsen) was the ring leader in the use of vulgar language relating to sex, oral sex, orgasms and the bringing of hard liquor and older boys to the girls' rooms contrary to the rules and ANITA's

protestations. The other witness (Alice Bryant) encouraged the older girls and attempted to butt-in to the admonitions ANITA was giving JANELLE. ANITA denies the use of vulgar language and threats toward JANELLE. A fair-minded reading of the referenced transcript will demonstrate the bias and prejudice of both witnesses, both of whom were fully discredited under cross-examination.

On page 10, JANETTE (following the District Court's lead) points out that Petitioner has not demonstrated "any class-based discriminatory animus" in support of her 1985(3) claim. Perhaps both have simply misunderstood Petitioner's position on that issue. Petitioner has consistently claimed that the motivation of JANETTE and SCOTT was to obtain custody of the children, disrupt the maternal household and avoid paying $107.00 per week in child support and then collect approximately $60.00 weekly from ANITA, all in addition to a revenge motive for having SCOTT arrested for assaulting ANITA during their marriage and for taking him back to court to collect arrears in child support. The class of persons of which Petitioner is a member is the female counter-parts of failed marriages, or otherwise single women parents.

The foregoing is set forth in the SMF and Affidavit of ANITA, paragraphs 6 and 7, the Affidavit of Michael Borlawsky, paragraph 4 (Cert. Pet. Appendix 43-44 and 47-50). Moreover, SCOTT acknowledged in his deposition that he lived under such poor housing conditions because he couldn't get a mortgage because of his monthly obligations, including about $500 in child support. After obtaining full custody and receiving the child support money

from ANITA, he obtained a mortgage and built a nice house (comparative photos in record).

III. SCOTT LOSCIUTO

Again, Petitioner does not wish to engage in factual disputes; but to the extent that SCOTT's allegations are pertinent and appropriate, ANITA either denies or contends that the facts he describes are either untrue or greatly distorted.

Finally, it is of great interest to note that all the Respondents failed to refute the allegations set forth on pages 5 and 6 of the Petition relating to the specific information DENBOW claims to have received from JANETTE, but denied by JANETTE, all of which creates serious questions of material facts as well as credibility.

CONCLUSION

The Supreme Court is respectfully urged to grant certiorari to the U.S. Court of Appeals for the First Circuit.

Respectfully submitted,

GROVER G. ALEXANDER
Counsel of Record for Petitioner